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SUBJECT: FINANCING OF ITY AND ICTR

¶1. SUMMARY: The Fifth Committee will begin discussing the financing of International Tribunal for the Former Yugoslavia (ITY) and the International Criminal Tribunal for Rwanda (ICTR) on Monday, December 15, 2008. Member States will consider the First Performance Report for ITY (A/63/559) and ICTR (A/63/558), the revised estimates arising in respect to Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the ITY, and further discuss the issue of establishing a possible financial retention incentive for the Tribunals. END SUMMARY.

¶2. FIRST PERFORMANCE REPORTS FOR THE ITY (A/63/559) AND ICTR (A/63/558): These reports reflect the Secretary-General's (SYG) request for additional appropriations for the Tribunals. The increased requirements reflect changes with respect to exchange rates, inflation, and standard salary costs. For the ICTR, the SYG report requests the General Assembly (GA) to approve an additional amount of \$7,831,700 gross (\$6,948,00 net) to the ICTR Special Account for the biennium 2008-2009. For the ITY, the GA is requested to approve an additional appropriation for the biennium 2008-2009 in the amount of \$13,117,900 gross (\$11,404,700 net) to the ITY Special Account. The Department may wish to take into account the observations and recommendations in the report of the ACABQ, which will be transmitted when available.

¶3. SECURITY COUNCIL RESOLUTION 1800 (2008): This SC resolution decided that the SYG may appoint, within existing resources, additional ad litem judges upon the request of the ITY President in order to conduct additional trials, notwithstanding the fact that the total number of ad litem judges appointed to the Chambers will from time to time temporarily exceed the maximum of 12 provided for in article 12 (1) of the International Tribunal statute. The SYG's report on the revised estimates arising in respect of SC resolution 1800 (2008) (A/62/809) estimates that the requirements for the appointment of up to four ad litem judges at any one time over the maximum of 12 would amount to \$374,500. However, the report claims that during this early stage, the Tribunal is not in a position to determine whether the additional costs can be met from within the approved appropriation. The GA may wish to take note of the present report and request the SYG to submit a report on the implementation of SC resolution 1800 (2008) in the context of the second performance report for the biennium 2008-2009. The ACABQ report on this matter (A/62/7/Add.38), however, expects the appointment of additional ad litem judges will indeed be implemented from within existing resources. Unless otherwise instructed, USUN will endorse the conclusions of ACABQ on this item.

¶4. RETENTION INCENTIVE: In its resolution 61/274, the GA requested the SYG to submit a report on possible measures for staff retention no later than the first resumed session of the 62nd UNGA. That report is contained in document A/62/681 and up for discussion during the current 63rd UNGA. The SYG recommends a combination of monetary and non-monetary incentives, of which the former is considered the most effective. The SYG would like the GA to approve a financial incentive for staff who remain in their posts until their

functions are no longer needed. The SYG report analyzes three alternative approaches to the calculation of the amount of a retention incentive.

--Option A: The incentive would apply to eligible staff having completed at least two years of service with the Tribunals at the time the incentive is due. The incentive will be calculated in accordance with the recommended methodology in A/61/824, which recommended that authorization be granted to the SYG to apply the termination indemnities set out under the heading "Permanent appointments" in annex III to the Staff Regulations and Rules for the specific and sole purpose of approving payments related to the retention incentive package for the Tribunal staff. The financial implications are estimated at \$11.2 million for the ICTR and \$12.1 million for the ITY. (paras. 30 to 35 of A/62/681)

--Option B: The retention incentive would apply to eligible staff having completed at least five years of service with the Tribunals at the time the incentive is due, with all other conditions remaining unchanged as in Option A. The financial implications are estimated at \$6.9 million for the ICTR and \$7.2 million for the ITY. (paras. 36 to 38 of A/62/681)

--Option C: The retention incentive would apply to eligible staff having completed at least five years of service with the Tribunals and be capped at an amount to be set for the GA, either in terms of a fixed number of months of salary or a fixed incentive payment. The financial implications will depend on what limits are approved of in the GA. (paras. 39 to 40 of A/62/681)

15. The SYG report recommends that this retention incentive apply to eligible staff who have completed at least five years of service with the Tribunals at the time the incentive is due as outlined in Option B. Moreover, the SYG report claims that designating this incentive to a limited group of "key" staffers would be perceived as giving unequal treatment and could undermine staff morale. The SYG recommends that the retention incentive be applicable on an as wide a post coverage basis as possible.

16. The ACABQ report as contained in document A/62/734, however, recommends a different scheme. Noting that a retention incentive is not provided for in the existing Staff Regulations and Rules, the ACABQ recommends that the GA authorize, on an exceptional basis, the payment of a retention incentive to staff required to remain with the Tribunals until their services and posts are no longer needed, as set out in the drawdown plans of each Tribunal, targeting staff with a minimum of five years of service in the Tribunals as outlined in Option C in the SYG report. The ACABQ also recommends the amount of the incentive be capped at five months' salary for all staff members, irrespective of the number of years of service at the Tribunals beyond five years. This decision should be done on an ad hoc basis and not on an amendment to the Staff Rules.

17. The International Civil Service Commission (ICSC) 2007 report as contained in A/62/30 advises that (a) special financial retention incentives for the ICTR and ITY are not considered appropriate because they are not provided for in the common system and as such would set a precedent, which should be avoided; (b) the existing contractual framework should be used to grant contracts that would remove the uncertainty with regard to future employment; (c) other non-monetary incentives should be made available; (d) those staff from the Tribunals who are offered appointments in another common system organization should have their reporting date for the new assignment to coincide with completion of their work with the Tribunal.

18. Unless otherwise instructed, USDel will continue to uphold the previously provided US position that the retention incentive as envisioned by the Tribunals is inappropriate. USUN would draw from the following points:

--US is concerned with the Tribunals' inability to target the incentive to those who actually need to be retained through the completion of the Tribunals' work.

--This retention incentive was not meant to be a universal bonus, which may perpetuate the problem of grade inflation, but rather it should be used to ensure that the most critical staff stay with the Tribunal as it works towards the completion strategy.

--US notes the ICSC recommendations, which clearly state that providing a financial incentive is not necessary and such an incentive is not provided in the common system and would thus set a precedent.

--US does not support the proposition that all or the majority of current staff are crucial and need to be given a retention bonus to retain their services.
Khalilzad